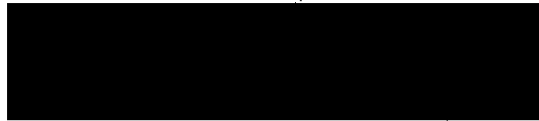




U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



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File: EAC-99-229-53536

Office: Vermont Service Center

Date:

DEC 4 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

John C. Mulrean

John C. Mulrean, Acting Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an individual who seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as the director of video and communications ministry. The director denied the petition determining that the petitioner had failed to establish that his prospective employer is a qualifying, tax-exempt religious organization. The director also found that the petitioner had failed to establish that his prospective occupation is a religious occupation or that his prospective employer has the ability to pay a wage.

On appeal, the petitioner submits photocopies of tax documents and photocopies of previously-submitted documents. The petitioner also submits a letter from his sister.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is a forty-eight-year-old married male native and citizen of Colombia. The petitioner entered the United States as a visitor on April 1, 1999 and his authorized period of admission expired on October 1, 1999. The petitioner indicated that he had never worked in the United States without permission.

The first issue to be examined is whether the petitioner's prospective employer meets the requirements of 8 C.F.R. 204.5(m) (3), which in pertinent part, states that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organizations's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

The petitioner did not submit any evidence that his prospective employer, [REDACTED] was a tax-exempt organization. On April 1, 2000, the director requested that the petitioner submit this evidence. The petitioner did not submit the requested documents. On appeal, the petitioner submits evidence from the Internal Revenue Service that his prospective employer is a tax-exempt religious organization. Accordingly, the petitioner has met the requirements at 8 C.F.R. 204.5(m) (3).

The next issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m) (2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in

religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated June 24, 1999, the pastor of the petitioner's prospective employer, [REDACTED] indicated that it wished to hire the petitioner as the director of video and communications ministry. On April 1, 2000, the director requested that the petitioner submit additional information. In response, [REDACTED] stated that:

The [petitioner's] duties require that he understand and is in complete agreement with the teachings and goals of our congregation, AND is able to minister with professional skill in the particular ministry of CABLE VISION PRODUCTION Beside his considerable past experience in working for TV studios and having operated his own small but professional Cable Production Studio, [the petitioner] has proven his skills to us in the past six months by producing high quality and aesthetically pleasing tapes.

On appeal, the petitioner submits photocopies of previously-submitted documents. The evidence submitted in support of this

petition does not demonstrate that the prospective occupation is a religious occupation. The petitioner has neither claimed, nor documented, that he was required to undergo any religious training or theological education prior to qualifying for the petition. Rather, it appears to be his skills with video and communications equipment that are the necessary talents. Furthermore, there is no evidence that this position is traditionally a full-time, salaried occupation within the denomination. As such, the petitioner has failed to establish that his prospective occupation is a religious occupation.

The next issue to be examined is whether the petitioner's prospective employer has the ability to pay a wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

[REDACTED] has not indicated what, if any, salary [REDACTED] will pay the petitioner. On April 1, 2000, the director requested that the petitioner submit additional information. The petitioner did not provide any information concerning a possible wage. On appeal, no evidence of [REDACTED] ability to pay a wage was submitted. 8 C.F.R. 204.5(g)(2) provides a list of documents that may be submitted to support a claim to be able to pay a wage. The petitioner has not submitted any of these documents. Accordingly, the petitioner has not established his prospective employer's ability to pay a wage in accordance with 8 C.F.R. 204.5(g)(2).

Beyond the decision of the director, the petitioner has failed to establish that he is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that he received a valid job offer as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.